IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2439 OF 2006

Mr. Sunil Kansal ... Petitioner

Vs.

Standard Chartered Bank & Ors. ... Respondents

Mr. Samir Vaidya for the petitioner.

Ms. Nipa Singh i/b Nahesh Menon & Co. for respondent 1.

CORAM : SMT. RANJANA DESAI &
SMT. ROSHAN DALVI, JJ.

DATED : NOVEMBER 27, 2007.

P.C.:-

1. The petitioner has challenged in this writ petition order dated 29/3/2005 passed by the Debts Recovery Appellate Tribunal, Mumbai (for short "DRAT"), order dated 1/3/2005 passed by the Debts Recovery Tribunal-1 (for short, "DRT") and order dated 18/10/2004 passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai. The case of the petitioner is that on

11/2/2002, he purchased a flat from one Sakeer Afzar Ahmed. He deposited the sale deed with respondent 1-bank and availed of a loan facility. The loan advanced to him by respondent 1-bank was to the tune of about Rs.21.60 lacs. As per agreement dated 31/1/2002 with respondent 1-bank, the interest was to be charged at 11.5% per annum. The case of the petitioner is that in the year 2002, he paid Rs.9 lacs to respondent 1-bank. He deposited six post dated cheques with the bank. Out of the six cheques, one cheque bounced. Thereafter, according to the petitioner in 2002, he raised a dispute that the interest rate charged is contrary to the agreed rate of interest. In support of his submission, learned counsel has drawn our attention to one e-mail which the petitioner had sent to respondent 1-bank. In the said e-mail, a reference is made to the floating rate of interest of 7.45% per annum. Learned counsel contended that thus respondent 1-bank wrongly charged interest at 11.5% per annum when it should have charged the floating rate of interest of 7.45% per annum. When we asked learned counsel as to from where he got this concept of floating rate of interest of 7.45% and what is the basis of this statement, he was unable to substantiate his contention. Admittedly, the agreement contemplates interest at 11.5% per annum. Assuming

that the petitioner had raised any such dispute, in our opinion, that dispute is without any basis.

2. Thereafter, on 14/2/2004, a notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2000 (for convenience, "the said Act") was issued to the petitioner by respondent 1-bank. The petitioner thereafter filed an application before the DRT. The petitioner raised a contention that notice under section 13(2) of the said Act was not received by him. This contention was rejected by DRT by a detailed judgment. We have carefully read the judgment of the DRT and we concur with the view taken by the DRT. The petitioner filed an appeal before the DRAT, Mumbai. On 29/3/2005, the DRAT directed the petitioner to deposit 25% of the amount demanded in the notice. The petitioner failed to comply with the said order. Therefore, by order dated 12/4/2005 the appeal filed by the petitioner was rejected. We are informed that thereafter public notice was issued by respondent 1-bank and after following all the formalities, auction was conducted and the flat was sold. Affidavit stating this has been filed by Mr. Irshad Shaikh, Authorised Officer of respondent 1-bank which we have carefully

perused.

3. Learned counsel for the petitioner contended that a fraud has been practiced on the petitioner. He submitted that notice was not served on the petitioner. We are not impressed by this submission. We have already stated that we concur with the judgment passed by the DRT so far as its conclusion as regards service of notice on the petitioner is concerned. DRT has rightly held that notice was served on the petitioner. We are not persuaded to hold that any fraud is played by respondent 1-bank. No case is made out for interference. Petition is rejected.

[SMT. RANJANA DESAI, J.]

[SMT. ROSHAN DALVI, J.]